

Lake Camp Road Stakeholder Meeting October 15, 2008

Meeting Notes

In attendance:

Jeff Austin, ME Municipal Association
Charles Baeder, Belgrade Reg. Cons. Alliance
Bill Bell, ME Assoc. of Conservation Districts
Barbara Berry, Maine Association of Realtors
Betsey Bowen, Maine Alliance for Road Assocs.
Clifford Buuck, Town of Readfield
Kristin Feindel, Maine DEP
Dale Finseth, Kennebec County SWCD
Larry Fleury, Pattee's Pond Assoc.
Bill Gannon, 13th Street Road Assoc.
Wendy Garland, Maine DEP

Amy Hudnor, LURC
Peter Kallin, Belgrade Reg. Cons. Alliance
Bill Laflamme, Maine DEP
Peter Newkirk, Maine DOT
Maggie Shannon, Congress of Lake Associations
Carl Snow, Pattee's Pond Assoc.
Rosetta Thompson, Franklin County SWCD
Clyde Walton, 30 Mile River Watershed Assoc.
Patten Williams, Worromontogus Lake Assoc.
Don Witherill, Maine DEP

Updates and Discussion of Proposed Strategies:

1. Proposed Updates to Title 23, Chapter 305, Subchapter 2: Private Ways

- 23 MRSA §3101 – Call of meetings; maintenance; repairs. It was noted that the version that was being used as the basis for revision was not quite the correct language that was passed by the last legislature. Since it has not yet been updated online, Bill L. will investigate to make sure the correct passed language is used as the base for the proposed updates. The following comments pertain to language changes drafted by DEP staff, which were included in the document e-mailed to the group prior to the meeting:
 - **§3101.1 – Definitions.** It was recommended that the definition of “qualified professional” clarify that any of the listed entities should have training and experience in the practice of road design, construction, and maintenance and that the NRCS should not be included as a specific entity since they do not do these kinds of direct visits without the local SWCD being involved.
 - **§3101.6 – Installation of ditches, drains, and culverts.** It was recommended that the term “stormwater practices” be used instead of “ditches, drains, and culverts” so as not to constrain work to these particular practices. It was also recommended to increase the distance to within 20 feet of any dwelling house and to check the septic system minimum distance is the same as required by state subsurface disposal rules.
- Takings - The issue of the installation of a stormwater practice resulting in a taking was a concern and resulted in discussion. In particular, the idea of who pays the compensation for a taking and how much it would be were concerns. Given that most road associations do not have that type of money, it is believed that proposed stormwater plans would work to minimize impact on landowners and work to get agreement from all involved parties, so there would be no resulting “taking.” There was discussion of whether to include language that the impact on landowners would be minimized and takings would be avoided to the greatest extent practicable.
- Maintenance - The group generally agreed maintenance of the stormwater practices should be required. The need to make clear who is responsible for the maintenance, that the responsible party has the right to do the maintenance, and who would enforce if there were

issues was also brought up. These items could be dealt with as a part of an easement agreement, but need to be dealt with somewhere since maintenance is an important piece of reducing pollution from camp roads.

- Easements – There is also the possibility of having this proposed subsection grant an easement along the road for the installation of stormwater practices. While this may be more palatable, it would restrict the stormwater practices to a narrow range of practices and locations, not by what would work best in a particular situation. The idea of clarifying whether easements that come under this subsection should be required to be written or not was also discussed.
- Disputes – Who would deal with disputes that arise regarding installation of stormwater practices and their maintenance should be made clear.
- 23 MRSA §3106 – Municipal assistance for purposes of protecting or restoring public waters. This a new proposed section. There was some discussion of whether “for a fee” needed to be included, given that municipalities can currently do such an activity for a fee. It was recommended to include road associations (not just “private individuals”) as an entity that municipalities may provide road services for.
 - Jeff suggested including more information on how to determine whether a stormwater practice meets the purpose of protecting or restoring public water quality and therefore justifies the use of public funds on a private road.
 - This section will be reworked to include more details and language concerning what is needed to protect water quality and then given to the Attorney General’s (AG’s) Office to review. The criteria used for 319 grant projects will likely be the source for the criteria for use of public funds by municipalities for stormwater work on private roads.
 - The AG’s Office is working on a draft opinion on whether the connection between using public funds to work on private roads for the purpose of protecting or restoring water quality is appropriate. The preliminary opinion is that such a nexus exists.
 - The revised and more detailed language for this section will be forwarded to the AG’s Office for review.
- Private Ways Update Subcommittee – a subcommittee was formed to work further on the wording and issues regarding the proposed Private Ways updates. Members: Bill L., Maggie, Clyde, Cliff, Bill G., Betsey, Patten. Contact Bill L. if you would like to join this subcommittee.

2. Propose Lake Protection Bond – The draft framework for the Lake Camp Road Improvement Grant Program was briefly discussed.

- Some suggestions were: allow the award of grants to towns or SWCDs to facilitate work on eligible roads; require ongoing maintenance, reporting, and possibly water quality testing; clarify which funds could be spent on engineering design, construction oversight and administrative time; and include the need for written permission from landowners. Also, in the bond proposal show what a large part of the state is in a great pond watershed and therefore would be eligible for the funds to broaden appeal to voters across the state.
- The bond proposal may be presented to the governor’s office through the DEP or by introducing a separate bill sponsored by a legislator, depending on what seems most promising.
- Bond Proposal Subcommittee – a subcommittee was formed to work further on the wording and issues regarding the bond proposal. Members: Wendy, Bill B., Maggie, Jeff. Contact Wendy if you would like to join this subcommittee.

3. Other Updates – The following updates were provided.

- Extend State Liability Coverage for Statutory Road Associations – Wendy has learned of several entities (“pick-your-owns”, volunteer groups) that have liability exemptions. The Judiciary Committee’s Policy Analyst, Peggy Reinsch, is working to identify the most suitable place to extend similar coverage for road associations. Draft legislative language will be developed to get this liability coverage for statutory road associations.
- Camp Road Standards – Bill L. tested the draft standards on a road with Larry and Carl and is going to test some others. So far, the standards/checklist seems to work well, with a couple of changes having been made.
- Increase DEP Enforcement of ESC Law – Wendy and Kristin have done some preliminary fieldwork to identify some camp roads violating the ESC law. DEP Field Services and Watershed Management will be meeting to discuss next steps. Due to the falling leaves and pine needles, more sites will not likely be found until spring.
- Other Comments - Carl noted that DEP should work to require formal road associations. Maggie noted that the public perception of enforcement needs to change. Peter N. suggested the wording in the “Strategies to Pursue” outline regarding DEP and DOT’s agreement may not be needed in the report since it is already in place, or the language should be changed slightly from what it is in the outline.

4. Next Steps

- Subcommittees will meet or exchange ideas over email, resulting in refined concepts and language.
- For the next meeting, hope to have the written opinion from the AG’s Office regarding the language providing authority for towns to assist with work on private roads.
- Draft report will be ready for review by the Committee at the next meeting.

5. Next Meeting

- December 11, 9:00 – noon, Location TBD